IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.788 OF 2005

IN

B.I.F.R. Case No.41 of 1998.

The Board of Industrial &
Financial Reconstruction .. Petitioner

Versus

M/s.Biogenics (India) Pvt.Ltd. .. Respondent

Mr.Sean Wasoodew for respondent - company
Ms.K.V.Gautam, Dy.O.L.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 19th January 2007.

P.C.

. Mentioned not on board.

2. Mr.Wassoodew, learned Counsel appearing for company states that the company petition was admitted on the basis of the opinion forwarded by BIFR recommending winding up of the company. However, when this Court proceeded to treat the said opinion as binding and admitted the petition, its attention was not invited to the order passed by AAIFR dated 22nd May 2006 setting aside the orders/opinion of BIFR in an appeal preferred by the company viz., Appeal No.407 of 2003.

3. Mr.Salim Shaikh, Managing Director of respondent Company has filed an affidavit stating therein the aforesaid facts. In such circumstances, the order of BIFR dated 21st August 2003 was no longer binding and in any event, it was set aside by AAIFR.

4. Subsequently, according to him, this

appeal has been allowed in May 2006. The order of BIFR dated 21st August 2003 is set aside and the matter is remanded to BIFR to consider the scheme proposed by the applicant.

5. There is no denial of the averments in the application. There cannot be any dispute as the orders passed by AAIFR would bind the BIFR and its recommendation/opinion, therefore, would not survive any longer. In such circumstances, this Court could not have proceeded with the matter and treated the said opinion as a petition for winding up of company.

6. In these peculiar circumstances, the order dated 29th September 2005 passed by this Court is recalled. The application is allowed. Needless to state that this does not prevent this Court from taking cognisance of any opinion/recommendation in future and commencing proceedings for winding up in pursuance thereof

or at the instance of aggrieved creditors.

7. Respondent - company to pay cost quantified at Rs.10,000/- to the O.L. All concerned to act on an authenticated copy of this order.

(S.C.Dharmadhikari, J)